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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,149	07/31/2001	Douglas J. Button	45784-70(P00009USU)	6418
7590 02/09/2005			EXAMINER	
Squire, Sanders & Dempsey L.L.P.			NI, SUHAN	
14th Floor			ART UNIT	
801 S. Figueroa Street			PAPER NUMBER	
Los Angeles, CA 90017-5554			2643	
DATE MAILED: 02/09/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/921,149

**Applicant(s)**

BUTTON ET AL.

**Examiner**

Suhan Ni

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 15-54,65-69 and 79-82 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15,21,25,28,31,32,47-49,65,66,68,80 and 81 is/are rejected.
- 7) ☒ Claim(s) 16-20, 22-24, 26-27, 29-30, 33-46, 50-54, 67, 69, 79, and 82 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

1. This communication is responsive to the amendment filed 11/15/2004.

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

2. Claim 80 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 80, the limitations of “a plurality of openings” in lines 2 and 6 are indefinite; since it is not clear how many set “openings” have been involved? Please see the previous claim, claim 15.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

3. Claims 15, 21, 25, 28, 47, 65 and 81 are rejected under 35 U.S.C. 102(b) as being anticipated by Avers (U. S. Pat. - 6,064,745).

Regarding claims 15, 47, 65 and 81, Avers discloses a phasing plug assembly, comprising: a first phasing plug (14); and a second phasing plug (16) positioned substantially

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adjacent to the first phasing plug (Fig. 3), wherein both said phasing plugs have a plurality of openings extending through both phasing plugs as claimed.

Regarding claim 21, Avers further discloses the phasing plug assembly, wherein the first phasing plug has a flange (20).

Regarding claims 25 and 28, Avers further discloses the phasing plug assembly, wherein the distance between the plurality of openings is about 0.5 inches (Figs. 3-4) as claimed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 31-32, 48-49, 66 and 68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Avers (U. S. Pat. - 6,064,745).

Regarding claims 31 and 66, Avers does not clearly teach that the first phasing plug is made of steel as claimed. Since Avers does clearly teach that the first phasing plug is manufactured through molding processing, and providing a suitable molding material for the molding processing is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable material, such as aluminum or steel for molding or casting the phasing plug.

Regarding claims 32, 49 and 68, Avers does not clearly teach that the second phasing plug is made of plastic as claimed. Since Avers does clearly teach that the first phasing plug is manufactured through molding processing, and providing a suitable molding material for the

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molding processing is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable material, such as plastic for molding or making the phasing plug.

Regarding claim 48, Avers does not clearly teach that the second phasing plug is made of steel as claimed. Since Avers does clearly teach that the first phasing plug is manufactured through molding processing, and providing a suitable molding material for the molding processing is very well known in the art, it therefore would have been obvious to one skilled in the art at the time the invention was made to provide a suitable material, such as aluminum or steel for molding or casting the phasing plug.

#### ***Allowable Subject Matter***

5. Claims 16-20, 22-24, 26-27, 29-30, 33-46, 50-54, 67, 69, 79 and 82 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Amendment***

6. Applicant's arguments dated 11/15/2004 have been fully considered, but they are not deemed to be persuasive.

The cited reference (U. S. Pat. - 6,064,745) does clearly show a phasing plug assembly, comprising: a first phasing plug (14); and a second phasing plug (16) positioned substantially adjacent to the first phasing plug (Fig. 3), wherein both said phasing plugs have a plurality of openings extending through both phasing plugs as claimed.

In response to applicants' argument that the references fail to show certain features of applicants' invention, it is noted that the features upon which applicant relies (i.e., In page 8-9,

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under the remarks, the applicants state “the claimed invention ... a phasing plug assembly where it is formed from at least **two pieces** ...”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

The applicants argue no motivation to combine the references. It is not necessary that the references actually suggest, expressly or in so many words the changes or improvements that applicants have made. The test for combining references is what the references as whole would have suggested to one of ordinary skilled in the art. **In re Sheckler**, 168 USPQ 716 (CCPA 1971); **In re Mlaughlin** 170 USPQ 209 (CCPA 1971); **In re Young** 159 USPQ 715 (CCPA 1968).

### ***Conclusion***

7. **THIS ACTION IS MADE FINAL.** See M.P.E.P. § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

8. Any response to this final action should be mailed to:

**Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450**

Or faxed to:

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**(703) 308-9051**, (for formal communications; please mark "EXPEDITED PROCEDURE"), or

**(703) 305-9508**, (for informal or draft communications, please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to:

**Receptionist, Sixth Floor,  
Crystal Park II,  
2121 Crystal Drive,  
Arlington, Virginia 22202**


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is **(703)-308-9322**, and the number for fax machine is **(703)-305-9508**. The examiner can normally be reached on Monday through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at **(703) 305-4708**.

10. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (**PAIR**) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov/>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

11. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is **(703) 305-3900**.

SN

February 5, 2005

  
**SUHAN NI**  
**PRIMARY EXAMINER**